

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

PB-2-Doe, a victim of childhood sexual abuse,

Plaintiff,

vs.

THE DIOCESE OF BUFFALO, HOLY CROSS
ROMAN CATHOLIC CHURCH and HOLY
CROSS SCHOOL,

Defendants.

SUMMONS

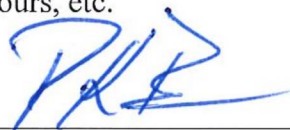
Index No.:

TO THE ABOVE NAMED DEFENDANTS:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the Complaint, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Complaint upon the undersigned attorneys listed below within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment by default will be taken against you for the relief demanded herein.

Dated: New York, New York
August 14, 2019

Yours, etc.



Paul K. Barr
FANIZZI & BARR, P.C.
Attorneys for Plaintiff
2303 Pine Avenue
Niagara Falls, NY 14301
716-284-8888
pbarr@fanizzibarr.com

-and-

Diane Paolicelli
PHILLIPS & PAOLICELLI, LLP
Attorneys for Plaintiff
747 Third Avenue, Sixth Floor
New York, New York 10017
212-388-5100
dpaolicelli@p2law.com

STATE OF NEW YORK
SUPREME COURT: COUNTY OF THE ERIE

PB-2-Doe, a victim of childhood sexual abuse,

Plaintiff,

vs.

THE DIOCESE OF BUFFALO, HOLY CROSS
ROMAN CATHOLIC CHURCH and HOLY
CROSS SCHOOL,

Defendants.

COMPLAINT

Index No.:

PB-2-Doe, a victim of childhood sexual abuse, by and through his undersigned attorneys,
as and for his Verified Complaint, alleges as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to the Child Victims Act, codified at CPLR 214-g.
2. Plaintiff PB-2-Doe was sexually abused by Monsignor Joseph Gambino (Msgr. Gambino), then a priest or pastor of Defendant Holy Cross Roman Catholic Church ("Holy Cross Church"). Defendant Holy Cross Church was at all relevant times under the authority of the Defendant Diocese of Buffalo ("Diocese").
3. Plaintiff was about five (5) years old at the time of his abuse by Msgr. Gambino.
4. The Roman Catholic Church, and the Defendants specifically, have long known that substantial numbers of priests throughout history, and up to and including the present day, violate their vows or promises of celibacy and otherwise misbehave by soliciting sexual contact with parishioners and others, in particular with children like Plaintiff, who are entrusted to their

spiritual care and guidance. Official Church documents dealing with this unspeakable misconduct span the centuries, many of which were and are well known to Defendants.

5. Notwithstanding this knowledge, and the fiduciary duty and relationship of trust owed to parishioners and their children, Defendants negligently, recklessly, and willfully failed to protect Plaintiff from sexual abuse, permitted the abuse to occur, failed to supervise, failed to timely investigate misconduct, acted to protect their own self-interest to the detriment of innocent children, and are otherwise responsible for the sexual assault of Plaintiff, and Plaintiff's consequential injuries and damages.

PARTIES

6. Plaintiff is an individual residing in Erie County, New York.

7. Plaintiff's date of birth is [REDACTED], 1943.

8. Defendant Diocese of Buffalo is a not for profit corporation, organized pursuant to the laws of the State of New York, with its principal place of business located at 795 Main Street, Buffalo, NY.

9. At all relevant times the Diocese oversaw, managed, controlled, directed and operated parishes, churches and schools for minor children within the Diocese.

10. At all relevant times, Defendant Holy Cross Church was and is a religious corporation organized pursuant to the laws of the State of New York, with its principal place of business located at 345 Seventh Avenue, Buffalo, NY.

11. At all relevant times, Defendant Holy Cross School was Roman Catholic elementary school in Buffalo, NY.

12. At all relevant times, Defendant Diocese oversaw, managed, controlled, directed and operated Defendant Holy Cross Church and Defendant Holy Cross School.

13. At all relevant times, Defendant Diocese owned the premises where Defendant Holy Cross Church and Defendant Holy Cross School were located.

14. At all relevant times, Defendant Diocese oversaw, managed, controlled, directed and assigned priests and lay teachers to work in parishes, churches and schools that were under the authority of the Diocese, including Defendant Holy Cross Church and Defendant Holy Cross School.

FACTUAL ALLEGATIONS

15. Plaintiff repeats and each and every allegation set forth above as if fully set forth herein.

16. In or about 1948-1949, Plaintiff was a student at Defendant Holy Cross School.

17. At all relevant times, Plaintiff and his family were parishioners of Defendant Holy Cross Church.

18. At all relevant times, Monsignor Joseph Gambino (Msgr. Gambino), then Fr. Gambino, was a Roman Catholic priest employed by Defendant Diocese and assigned to Defendant Holy Cross Church. Upon information and belief, he served as pastor of the church.

19. At all relevant times, Msgr. Gambino was under the direct supervision and control of the Defendant Diocese and Defendants Holy Cross Church and Holy Cross School. His assigned duties included, *inter alia*, serving as priest and, upon information and belief, as pastor. His duties included interacting with, mentoring, disciplining and counseling children.

20. At all relevant times Defendants authorized Msgr. Gambino to be alone with children, including Plaintiff, and to have unfettered and unsupervised access to them.

21. Defendants authorized Msgr. Gambino to have physical contact with minors, in a manner consistent with providing discipline, counseling, educational and spiritual guidance, and leadership.

22. Defendants required students, like Plaintiff, to accept discipline and instruction from clergy, including Msgr. Gambino, and to obey their orders.

23. Plaintiff was raised as a Catholic, and at all relevant times was encouraged to have reverence, fear and respect for the Catholic Church and its clergy.

24. In or about 1948-1949, when Plaintiff about five (5) years old and on school premises, Msgr. Gambino asked that Plaintiff be brought to him privately, presumably for disciplinary purposes. Plaintiff was taken to Msgr. Gambino by a nun, who was also in the employ of Defendants.

25. While Msgr. Gambino was alone with Plaintiff, Msgr. Gambino engaged in unpermitted, forcible and harmful sexual contact with Plaintiff. This sexual abuse, which was repeated, took place in the rectory, sacristy or other secluded section of Defendants Holy Cross Church and/or Holy Cross School.

26. Msgr. Gambino admonished Plaintiff not to tell anyone about the abuse, and threatened Plaintiff that revealing the abuse would adversely affect his record and grades. He also told Plaintiff it would be a "sin" to tell anyone about Msgr. Gambino's molestation.

27. In addition to Msgr. Gambino's threats, Plaintiff's relationship to Defendants as a vulnerable child and student, and the culture of the Catholic Church which Defendants endorsed, put pressure on Plaintiff not to report the sexual molestation and abuse.

28. Defendants knew or should have known that Msgr. Gambino was a danger to minor boys like Plaintiff, before the sexual abuse of Plaintiff occurred.

29. The Vatican and other church authorities addressed the problem of clergy sex abuse on countless occasions prior to the abuse of Plaintiff, and communicated as much with all levels of Church hierarchy including bishops and other Diocesan leaders. As such, at all relevant times, Defendants were well aware that errant sexual behavior by some priests was not only widespread but predictable.

30. Upon information and belief, not only was Defendant Diocese aware of sexual abuse of children, but it participated in covering up such heinous acts by moving errant priests and clergy members from assignment to assignment, thereby putting children in harm's way.

31. Defendants owed Plaintiff a duty of reasonable care because they had superior knowledge about the risks their facilities posed to minor children, the risk of abuse in general, and the risks that Msgr Gambino posed to Plaintiff.

32. Prior to the time of Plaintiff's abuse Defendants knew or should have known of numerous acts of sexual assault committed by clergy members within the Diocese and elsewhere in the Roman Catholic Church, and knew that there was a specific danger of child sex abuse for children in their institutions and programs.

33. The sexual abuse of Plaintiff described above was foreseeable.

34. Prior to the time of Plaintiff's abuse, Defendants knew or should have known of acts of child sexual abuse by Msgr. Gambino on other children.

35. Defendants owed Plaintiff a reasonable duty of care because they affirmatively solicited parishioners and parents to send their children to Defendant Holy Cross School; they undertook custody of minor children, including Plaintiff; they promoted their facilities and programs as being safe for children, they held out their agents, including priests and nuns, as safe to work with and around minors, they encouraged parents and children to spend time with their

agents; and/or authorized their agents, including the priests nuns, to spend time with, interact with, and recruit children.

36. Defendants owed Plaintiff a heightened, fiduciary duty of care because they held themselves out as being able to provide a safe and secure environment for children, including Plaintiff; Plaintiff's parents entrusted Plaintiff to Defendants' care, and expected that Plaintiff would be safe and properly supervised in an environment free from harm and abuse; Plaintiff was a vulnerable minor, and unable to protect himself; and Defendants affirmatively assumed a position of empowerment over Plaintiff.

37. Defendants owed Plaintiff a duty to protect him from harm because Defendants' acts and omissions created a foreseeable risk of harm to Plaintiff.

38. As a result of the foregoing, Plaintiff has suffered and continues to suffer great physical and mental pain and anguish, severe and permanent emotional distress, psychological injuries, fear and anxiety; was prevented and will continue to be prevented from performing his normal daily activities; was and will continue to be deprived of the enjoyment of life's pleasures; has suffered and continues to suffer loss of spirituality; has suffered loss of earnings and earning capacity; has incurred and may in the future incur expenses for medical and psychological treatment, and was otherwise damaged.

COUNT I

NEGLIGENT HIRING, RETENTION, SUPERVISION, AND DIRECTION

39. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

40. At all relevant times Defendants had a duty to exercise due care in hiring, appointing, assigning, retention, supervision and direction of its clergy, including Msgr.

Gambino, so as to protect minor children, including Plaintiff, who were likely to come into contact with, and/or under the influence or supervision of them, and to ensure that Msgr. Gambino did not use his assigned position to injure minors by sexual assault, contact or abuse.

41. Defendants were negligent and failed to use reasonable care in hiring, appointing, assigning, and retention, of Msgr. Gambino, failed to properly investigate his background and employment history, and/or hired, appointed and/or assigned Msgr. Gambino to Defendants Holy Cross Church and Holy Cross School, when Defendants knew or should have known of facts that would make him a danger to children; and Defendants were otherwise negligent.

42. Defendants were negligent and did not use reasonable care in their supervision and direction of Msgr. Gambino, failed to monitor his activities, failed to oversee the manner in which he carried out the duties to which Defendants assigned him, even though they knew or should have known that Msgr. Gambino posed a threat of sexual abuse to minors; allowed the misconduct described above to occur; failed to investigate Msgr. Gambino's dangerous activities and remove him from their premises; and Defendants were otherwise negligent.

43. Msgr. Gambino would not have been in a position to sexually abuse Plaintiff had Defendants not been negligent in the hiring, retention, supervision, and direction of Msgr. Gambino.

44. Defendants were also negligent in failing to properly train, supervise, instruct, direct the nun who brought Plaintiff to Msgr. Gambino and left Plaintiff alone with him, and in failing to properly train, supervise, instruct and direct any other clergy or lay teachers who failed to protect Plaintiff from abuse by Msgr. Gambino, and Defendants were otherwise negligent.

45. At all relevant times, Msgr. Gambino and the aforementioned nun who brought Plaintiff to Msgr. Gambino, acted in the course and scope of their employment with Defendants.

46. Defendants' aforesaid actions were willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

47. Plaintiff suffered grave injury as a result of the foregoing sexual abuse and misconduct, including physical, psychological and emotional injury as described above.

48. By the reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, together with interest and costs.

COUNT II

NEGLIGENT, RECKLESS, AND WILLFUL MISCONDUCT

49. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

50. At all relevant times, Defendants affirmatively and/or impliedly represented to minor children, their families and the general public that clergy working in the Diocese, including Msgr. Gambino, did not pose a risk and/or that he did not have a history of sexually abusing children, and that children, including Plaintiff, would be safe in his care.

51. Defendants knew or should have known this representation was false and that employing Msgr. Gambino and giving him unfettered access to children, including Plaintiff, posed an unacceptable risk of harm to children.

52. Defendant Diocese maintained a policy and practice of covering up criminal activity committed by clergy members within the Diocese.

53. Over the decades, this "cover-up" policy and practice of the Diocese resulted in the sexual assault of untold numbers of children, and put numerous other children at risk of sexual assault.

54. Defendants failed to report multiple allegations of sexual abuse by their employees, agents and representatives, to the proper authorities, thereby putting children at risk of sexual assault.

55. Upon information and belief, Defendants covered up acts of abuse by Msgr. Gambino and concealed facts concerning his sexual misconduct from Plaintiff and his family.

56. By failing to disclose the identities, histories and information about sexually abusive clergy in their employ, Defendants unreasonably deprived the families of children entrusted to their care, including Plaintiff, of the ability to protect their children.

57. Defendants failed to warn Plaintiff and his parents that Msgr. posed a risk of child sexual assault.

58. The conduct of Defendants as described herein was done with utter disregard as to the potential profound injuries which would ensue, and with depraved indifference to the health and well-being of children, and to the fact that Defendants were knowingly subjecting children in their charge, including Plaintiff, to sexual crimes.

59. Defendants' aforesaid actions were negligent, reckless, willful and wonton in their disregard for the rights and safety of children, including Plaintiff.

60. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

61. By the reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, together with interest and costs.

COUNT III

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

62. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

63. The sexual abuse of Plaintiff was extreme and outrageous conduct, beyond all possible bounds of decency, atrocious and intolerable in a civilized world.

64. Defendants' aforesaid negligent, grossly negligent and reckless misconduct, endangered Plaintiff's safety and caused him to fear for his own safety.

65. Defendants knew or disregarded the substantial probability that Msgr. Gambino would cause severe emotional distress to Plaintiff.

66. As a direct and proximate result of Defendants' foregoing misconduct, Plaintiff suffered severe emotional distress including psychological and emotional injury as described above.

67. By the reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

COUNT IV**PREMISES LIABILITY**

68. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

69. At all relevant times, Defendants owned, operated, and /or controlled the premises of Defendants Holy Cross Church and Holy Cross School, including the areas where the sexual abuse of Plaintiff occurred.

70. At all relevant times, Plaintiff was rightfully present at the aforementioned premises.

71. Defendants had a duty to see that the premises at which Plaintiff was rightfully present were in a reasonably safe condition for the intended use by students, like Plaintiff, whose presence was reasonably anticipated.

72. Defendants willfully, recklessly, and negligently failed to provide a reasonably safe premises that were free from the presence of sexual predators and/or the assault by the occupants of the premises, including Mgrs. Gambino. Defendants thereby breached their duty of care to Plaintiff.

73. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

74. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

COUNT V

BREACH OF FIDUCIARY DUTY

75. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

76. At all relevant times, there existed a fiduciary relationship of trust, confidence and reliance between Plaintiff and Defendants. The entrustment of Plaintiff to the care and supervision of the Defendants while Plaintiff was a vulnerable child, imposed upon Defendants a fiduciary duty to act in the best interests of Plaintiff.

77. Defendants were entrusted with the well-being, care, and safety of Plaintiff, which Defendants had a fiduciary duty to protect.

78. By reason of the foregoing, Defendants breached their fiduciary duties to Plaintiff.

79. As a direct and proximate result of Defendants' foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

80. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

COUNT VI

BREACH OF DUTY IN LOCO PARENTIS

81. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

82. At all relevant times, Plaintiff was a vulnerable child entrusted to Defendants' care, and was under the supervision and control of Defendants, such that Defendants owed him a duty to act *in loco parentis* and to prevent foreseeable injuries.

83. By reason of the foregoing, Defendants breached their duties to act *in loco parentis*.

84. As a direct and proximate result of Defendants' foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

85. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

COUNT VII

BREACH OF STATUTORY DUTIES TO REPORT

86. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

87. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420, Defendants had a statutory duty to report reasonable suspicion of abuse of children in their care.

88. Defendants breached their statutory duty by failing to report reasonable suspicion of abuse by Msgr. Gambino of children in their care.

89. As a direct and proximate result of Defendants' foregoing breaches, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

90. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

WHEREFORE, Plaintiff prays for judgment as follows:

- a. Awarding Plaintiff compensatory damages for his injuries, in an amount to be determined at trial;
- b. Awarding Plaintiff punitive damages for his injuries, in an amount to be determined at trial;
- c. Awarding Plaintiff prejudgment interest, to the extent available by law;

- d. Awarding Plaintiffs costs and disbursements and attorneys' fees to the extent available by law; and
- e. Awarding such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

91. Plaintiff demands a trial by jury of all issues triable by jury in this action.

Dated: New York, New York
August 14, 2019

Yours, etc.



Paul K. Barr
FANIZZI & BARR, P.C.
Attorneys for Plaintiff
2303 Pine Avenue
Niagara Falls, NY 14301
716-284-8888
pbarr@fanizziandbarr.com

-and-

Diane Paolicelli
PHILLIPS & PAOLICELLI, LLP
Attorneys for Plaintiff
747 Third Avenue, Sixth Floor
New York, New York 10017
212-388-5100
dpaolicelli@p2law.com